



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

SMC
Docket No: 00674-99
29 June 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Sub: IC1 (SW) [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 19Jan98 w/attachments
(2) DODIG memo dtd 14 Mar00
(3) PERS-311 memo dtd 22Jun00
(4) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected by removing the enlisted performance evaluation report for 1 December 1995 to 3 July 1996. A copy of this report is at Tab A.

2. The Board, consisting of Mses. Moidel and Newman and Mr. Geisler, reviewed Petitioner's allegations of error and injustice on 29 June 2000, and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. In correspondence attached as enclosure (2), the Department of Defense Inspector General advised that investigation indicated the contested evaluation had been in reprisal for Petitioner's "whistleblower" complaint.

c. In correspondence attached as enclosure (3), the Navy Personnel Command office having cognizance over the subject matter addressed in Petitioner's application has commented to the effect that his request has merit and warrants favorable action.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (3), the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing therefrom the following enlisted performance evaluation report and related material:

Date of Report	Reporting Senior	Period From	of Report To
5Aug96	[REDACTED] USN	1Dec95	3Jul96

b. That there be inserted in Petitioner's naval record a memorandum in place of the removed report, containing appropriate identifying data concerning the report; that such memorandum state that the report has been removed by order of the Secretary of the Navy in accordance with the provisions of federal law and may not be made available to selection boards and other reviewing authorities; and that such boards may not conjecture or draw any inference as to the nature of the report.

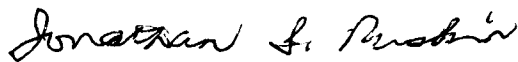
c. That appropriate corrections be made to the magnetic tape or microfilm maintained by the Navy Personnel Command.

d. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

e. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


JONATHAN S. RUSKIN
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.


W. DEAN PFEIFFER
Executive Director

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INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-2886

MAR 14 2000

Interior Communications Specialist 1st Class [REDACTED]

USS Monsoon (PC 4)
FPO AP 96672 1963

Dear Interior Communications Specialist 1st [REDACTED]

This is to inform you the Naval Inspector General (NAVINGEN) has completed an investigation into your reprisal allegations, conducted under Title 10, United States Code, Section 1034 (10 U.S.C. 1034), "Military Whistleblower Protection Act." Specifically, you alleged that as reprisal for filing a complaint with NAVINGEN and for filing an Article 138 complaint against your commanding officer, you received an unfavorable Evaluation Report and Counseling Record.

The Navy investigation found that the above adverse personnel action was not in reprisal for your protected communications. However, a NAVINGEN legal review of the report of investigation did not support that finding and concluded that, in fact, you were the subject of reprisal. We conducted a thorough review of both the report of investigation and the legal analysis and agree with the conclusion of the legal analysis that you were the victim of reprisal.

Under 10 U.S.C. 1034 you may request the Board for Correction of Naval Records (BCNR) consider an application for correction of your military records. Enclosed is an application should you choose to have the matter considered. The BCNR address is: Board for Correction of Naval Records, 2 Navy Annex, Washington, D.C. 20370-5100. The telephone number is (703) [REDACTED].

Enclosed is a copy of the Navy report of investigation, the legal analysis, and backup documentation redacted under the guidelines of the Freedom of Information Act.

Should you have any questions, please contact [REDACTED] Office of Departmental Inquiries, [REDACTED].

Sincerely,

[REDACTED]
Director
Special Inquiries

Enclosures

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL

To	From
Dept./Agency BCNR	[REDACTED]
Fax # [REDACTED]	Fax # [REDACTED]
GENERAL SERVICES ADMINISTRATION	

NSN 7540-01-517-7906

5000-101

TOTAL P.02



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

674-99

1610
PERS-311
22 June 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: PERS/BCNR Coordinator (PERS-00ZCB)

Subj: IC1(S [REDACTED]) U [REDACTED]

Ref: (a) BUPERSINST 1610.10 EVAL Manual
(b) DON Inspector General ltr dated 14 March 2000

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of his performance evaluation for the period 1 December 1995 to 3 July 1996.

2. Based on our review of the material provided, we find the following:

a. A review of the member's headquarters record revealed the report in question to be on file. It is signed by the member acknowledging the contents of the report and his right to submit a statement. The member did not desire to submit a statement.

b. The member alleges the evaluation was in retaliation for an on going inspector general investigation and an Article 138 initiated regarding harassment by superiors. Evaluating a member's performance and making recommendations concerning promotion and assignments are the responsibilities of the reporting senior. These duties are accomplished in the performance evaluation. In viewing petitions that question the exercise of the reporting senior's evaluation responsibilities, we must determine if the reporting senior abused his/her discretionary authority. We must see if there is any rational basis to support the reporting senior's decision, and whether the reporting senior's actions were the result of improper motive. However, we must start from the position that the reporting senior exercised his/her discretion properly. Therefore, for us to recommend relief, the petitioner has to demonstrate that the reporting senior did not properly exercise his/her authority. The petitioner must show that the reporting senior acted for illegal or improper purpose. The petitioner must do more than just assert the improper exercise of discretion, he must provide evidence to support the claim. I believe Petty Officer [REDACTED] has done so.

c. Based on reference (b), we believe the performance evaluation for the period 1 December 1995 to 3 July 1996 should be removed from Petty Officer [REDACTED] record.

674-99

- d. The member proves the report to be unjust or in error.
3. We recommend removal of the performance evaluation in question.

[REDACTED]

Head, Performance
Evaluation Branch